No. 80-1508

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ALEXANDER L. STE
CLERK

In The
Supreme Court of the United States

October Term, 1980

GILA RIVER INDIAN COMMUNITY,
Petitioner,

v.

HENNINGSON, DURHAM & RICHARDSON, and RANIER CONSTRUCTION COMPANY, INC.,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

REPLY BRIEF

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28 U.S.C. §1362, added Pub. L. No. 89-635, §1, October 10, 1966, 80 Stat. 880 1,2

TEXT BOOKS

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I

Respondent Henningson, Durham and Richardson ("Engineer/Architect") contends that 28 U.S.C. §1362 was enacted for solely one purpose. Section 1362 was enacted for a variety of reasons all of which were for the purpose of broadening access of Indian tribes to federal courts.[1]

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[1] See appended S.Rep. No. 1507, 89th Cong., 2d Sess. (1966) and H.R. Rep. No. 2040, 89th Cong., 2d Sess. (1966), cited by respondent. While there are passages in the reports cited by respondent which may indicate that removing the $10,000 jurisdictional amount in controversy was the purpose of 28 U.S.C. §1362, other passages indicate that Congress intended more. *E.g.*, the title to the House Report (page A-1 herein) states "and for other purposes" and the report explains (page A-3 herein):

> The committee feels that there is another factor which is relevant in this situation and serves to emphasize the justification for enactment of this bill. The United States as trustee can initiate litigation involving issues identical to those which would be presented in cases brought under the new section. The enactment of this bill would provide for U.S. district court jurisdiction in those cases where the U.S. attorney declines to bring an action and the tribe elects to bring the action. As is observed in the Department of the Interior report, the tribes would then have access to the Federal courts through their own attorneys. It can therefore be seen that the bill provides the means whereby the tribes are assured of the same judicial determination whether the action is brought in their behalf by the Government or by their own attorneys. There is a large body of Federal law which states the relationship, obligations and duties which exists between the United States and the Indian tribes. The Federal forum is therefore appropriate for litigation involving such issues.

The Senate Report statement gives reasons for the broader intent (page A-12 herein):

> There is great hesitancy on the part of tribes to use State courts. This reluctance is founded partially on the traditional fear that tribes have had of the States in which their reservations are situated. Additionally, the Federal courts have more expertise in deciding questions involving treaties with the Federal Government, as well as interpreting the relevant body of Federal law that has developed over the years.
>
> . . . .
>
> The proposed legislation will remedy these defects by making it possible for the Indian tribes to seek redress using their own resources and attorneys.
>
> After a study of all of the foregoing the committee is of the opinion that this legislation is meritorious, and recommends that the bill S. 1356, as amended, be considered favorably.

II

Respondent Engineer/Architect misunderstands the second Question Presented by Petitioner Gila River Indian Community ("TRIBE"). TRIBE's second question recognizes that negligent injury to the land or a building by a contractor constitutes a tort, W. Prosser, *The Law of Torts*, p. 617 (4th ed. 1971), as well as a breach of contract. *National Fire Insurance Company of Hartford v. Westgate Construction Company*, 227 F.Supp. 835, 837-838 (D. Del. 1964). More importantly, one of the lessons of *Oneida Indian Nation v. County of Oneida*, 414 U.S. 661 (1974), is that it is not the type of action which determines whether there is federal question jurisdiction but whether harm to the trust property is asserted. (414 U.S. at 666-671, at 683-684). TRIBE has repeatedly explained that this action sounded both in tort and contract.[2]

Respondent Engineer/Architect argues that TRIBE does not have the right by federal law to have the buildings built. The question here is not whether federal law requires the construction of a building. The issue is whether there is jurisdiction in the federal courts under 28 U.S.C. §1362,

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[2] *E.g.*, TRIBE so stated in the Response to the Motion to Dismiss in the trial court. (Clerk's record, pages 181-183.) In an earlier portion of the pleading from which respondent selected a quotation to suggest TRIBE admitted its claims were solely in contract, TRIBE discussed the application for a claim additionally in tort. (Clerk's record, pages 76-78.) Before the court of appeals, TRIBE represented this action as sounding both in contract and in tort. TRIBE's Issues Nos. 1 and 4 presented for review, in TRIBE's Opening Brief (corrected) before the Court of Appeals for the Ninth Circuit; TRIBE's Petition for a Rehearing In Banc before the Court of Appeals for the Ninth Circuit, pages 4-8.

Respondent engineer/architect's "Question Presented" incorrectly characterizes actions seeking relief for damages to Indian reservation land as "actions brought by Indian tribes not arising under federal law. . . ."

when a building negligently constructed on federal Indian trust land breaks up and falls apart due to such negligence making useless both the building and the land upon which it is situated.

CONCLUSION

The petition for writ of certiorari should be granted.

Respectfully submitted,

Z. Simpson Cox
COX AND COX

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(602) 254-7203
Counsel of Record
for Petitioner

89TH CONGRESS 2d Session | HOUSE OF REPRESENTATIVES | REPORT No. 2040

AMENDING THE JUDICIAL CODE TO PERMIT INDIAN TRIBES TO MAINTAIN CIVIL ACTIONS IN FEDERAL DISTRICT COURTS WITHOUT REGARD TO THE $10,000 LIMITATION, AND FOR OTHER PURPOSES

SEPTEMBER 12, 1966.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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Mr. MCCLORY, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany S. 1356]

The Committee on the Judiciary, to whom was referred the bill (S. 1356) to amend the judicial Code to permit Indian tribes to maintain civil actions in Federal district courts without regard to the $10,000 limitation, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE

The purpose of the proposed legislation is to provide that the district courts are to have original jurisdiction of all civil actions brought by Indian tribes or bands wherein the matter in controversy arise under the Constitution, laws, or treaties of the United States. These civil actions would

therefore be permitted without regard to the $10,000 jurisdictional amount provided in section 1331(a) of title 28, when brought by an Indian tribe or band under the authority of the new section added by the bill.

STATEMENT

The Department of the Interior in its report to the Senate committee recommended the enactment of the bill. The Department of Justice made no recommendation as to the bill, and the administrative office of the U.S. court in behalf of the Judicial Conference stated that the Judicial Conference in its September 1965 session voted to approve the legislation.

By adding a new section 1362 to chapter 85 of title 28 of the United States Code, the bill would add language to that title making it possible for an Indian tribe or band having a governing body recognized by the Secretary of the Interior to bring actions in a district court where the matter in controversy arises under the Constitution, laws, or treaties of the United States. In providing for original jurisdiction of all civil actions of this type, the bill has the effect of removing the $10,000 jurisdictional requirement which presently applies as to such actions by reason of the provisions of section 1331 of the same chapter of title 28. The district courts now have jurisdiction over cases presenting Federal questions brought by the tribes when the amount in dispute exceeds $10,000. Enactment of this bill would merely authorize the additional jurisdiction of the court over those cases where the tribes are not able to establish that the amount in controversy exceeds that amount. In its report to the Senate Committee, the Department of the Interior specifically pointed out that the issues involved in cases involving tribal lands that either are held in trust or were so held by the United States or are held by the tribe subject to restriction against alienation imposed by the United States are Federal issues. The Department therefore observed that particularly as to this class of cases it is appropriate that the actions be brought in a U.S. district court. In its state-

ment to the Senate committee, that Department referred to the unique governmental status of Indian tribes and the unique relationship which exists between them and the Federal Government. This is a relationship often affected by treaties and the Department of the Interior indicated that a tribe's desire to have a Federal forum for matters based upon Federal questions is justified.

The report of the Department of Justice referred to the case of *Yoder v. Assiniboine and Sioux Tribes of Fort Peck Indian Reservation, Mont.* (339 F. 2d 360 (1964)), and the committee feels that this case serves to exemplify the difficulties encountered by Indian tribes in connection with the type of litigation which would be governed by the new section 1362 added to the law by this bill. In that case, the Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, Mont., sought to enjoin the enforcement of a State order attempting to pool the lands owned by the tribes with the lands of another to form a "spacing unit" in connection with the drilling of an oil and gas well. The tribes were successful in the district court. However, on appeal to the U.S. Court of Appeals for the Ninth Circuit, the case was reversed on jurisdictional grounds because of the difficulty in establishing the amount in controversy as more than $10,000. The incongruity of this situation is pointed up by the fact that, traditionally the matters concerning Indian lands under trust allotments fall within the exclusive control of the Federal Government. The judicial determination of controversies concerning such lands commonly is committed to the Federal courts. *Minnesota v. United States,* 305 U.S. 382 (1938).

The committee feels that there is another factor which is relevant in this situation and serves to emphasize the justification for enactment of this bill. The United States as trustee can initiate litigation involving issues identical to those which would be presented in cases brought under the new section. The enactment of this bill would provide for U.S. district court jurisdiction in those cases where the U.S.

attorney declines to bring an action and the tribe elects to bring the action. As is observed in the Department of the Interior report, the tribes would then have access to the Federal courts through their own attorneys. It can therefore be seen that the bill provides the means whereby the tribes are assured of the same judicial determination whether the action is brought in their behalf by the Government or by their own attorneys. There is a large body of Federal law which states the relationship, obligations and duties which exists between the United States and the Indian tribes. The Federal forum is therefore appropriate for litigation involving such issues.

In his statement before the Senate committee, the representative of the Department of Interior stated that it was the Department's view that the creation of the jurisdiction contemplated by the bill will not add appreciably to the burdens of the Federal courts. As has been noted, these courts now entertain cases brought by the Federal Government to vindicate tribal rights without regard to the amount in controversy. Further, they now entertain cases presenting Federal questions brought by the tribes when the amount in dispute exceeds $10,000. This bill would therefore authorize the addition of only those cases, which the Justice Department stated would probably not be large in number, where the tribes have not been able to show that the amount in controversy exceeds $10,000, and the Government for some reason does not want to prosecute the case in behalf of the tribe. The Judicial Conference in commenting on this type of case has stated that the jurisdiction contemplated by the bill would present no diffiuclty of judicial administration.

In view of the matters discussed above, and the favorable position of the Department of the Interior and the Judicial Conference of the United States, the committee recommends that the bill be considered favorably.

Attached hereto and made a part hereof are the reports to the Senate committee of the Department of the Interior, the Department of Justice, and the Judicial Conference of the United States:

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., December 22, 1965.

Hon. JAMES O. EASTLAND,
Chairman, Committee on the Judiciary,
U.S. Senate, Washington, D.C.

DEAR SENATOR EASTLAND: This responds to your request for a report on S. 1356, a bill to amend the Judicial Code to permit Indian tribes to maintain civil actions in Federal district courts without regard to the $10,000 limitation, and for other purposes.

We recommend that the bill be enacted.

The bill removes the $10,000 jurisdictional limitation upon civil litigation in the U.S. district courts by Indian tribes when the matter in controversy arises under the Constitution, laws, or treaties of the United States.

The Judicial Conference has endorsed the bill on the grounds that (1) it presents no difficulty of judicial administration and (2) it is in line with recently enacted statutes conferring Federal question jurisdiction without regard to the amount of money involved. We concur in that view.

In addition, it is particularly appropriate to remove the $10,000 limitation with respect to litigation involving tribal lands that are or were held by the United States in trust for the tribe, or by the tribe subject to a restriction against, alienation imposed by the United States. The issues involved are Federal issues and the tribes should not be required to conduct the litigation in the State courts.

It should be noted that the United States as trustee can initiate the litigation in the Federal courts, and often does so. Occasionally, however, the U.S. attorney declines to bring an action, and the tribes should then have access to the Federal courts through their own attorneys.

The new section added to title 28 of the United States Code should be section 1362 rather than section 1361.

We also suggest that the bill should add the new section 1362 to the table of contents for chapter 85 that precedes section 1331.

The Bureau of the Budget has advised that there is no objection to the presentation of this report from the standpoint of the administration's program.

Sincerely yours,

HARRY R. ANDERSON,
Assistant Secretary of the Interior.

ADMINISTRATIVE OFFICE OF THE U.S. COURTS,
SUPREME COURT BUILDING,
Washington, D.C., October 1, 1965.

Hon. JAMES O. EASTLAND,
Chairman, Committee on the Judiciary,
U.S. Senate, Washington, D.C.

DEAR SENATOR EASTLAND: This is in further reply to your request of March 11, 1965, for the views of the Judicial Conference of the United States on S. 1356, a bill to amend the Judicial Code to permit Indian tribes to maintain civil actions in Federal district courts without regard to the $10,000 limitation, and for other purposes.

At its recent session on September 22-23, 1965, the Judicial Conference voted to approve this legislation. The Conference believes that the elimination of the $10,000 jurisdictional limitation upon civil litigation of Indian tribes,

would present no difficulty of judicial administration and would be in line with the more recently enacted statutes conferring Federal question jurisdiction which do not contain a monetary limitation.

It should be noted athat the proposed section 1361 of title 28 of S. 1356 should be numbered 1362 as the previous number is already in use.

Sincerely,

WILLIAM E. FOLEY,
Deputy Director.

U.S. DEPARTMENT OF JUSTICE,
OFFICE OF THE DEPUTY ATTORNEY GENERAL,
Washington, D.C., March 4, 1966.

Hon. JAMES O. EASTLAND,
Chairman, Committee on the Judiciary,
U.S. Senate, Washington, D.C.

DEAR SENATOR: This is in response to your request for the views of the Department of Justice on S. 1356, a bill to amend the Judicial Code to permit Indian tribes to maintain civil actions in Federal district courts without regard to the $10,000 limitation, and for other purposes.

Under existing law the district courts have original jurisdiction of all civil actions wherein the matter in controversy exceeds the sum or value of $10,000, exclusive of interest and costs, and arises under the Constitution, laws, or treaties of the United States (28 U.S.C. 1331(a)). The $10,000 jurisdictional amount is, of course, not applicable to actions brought in the name of the United States to enforce rights of Indian tribes arising under the Constitution, laws or treaties of the United States (28 U.S.C. 1345). The bill would amend the Judicial Code by adding a new section under which the district courts would be vested with original jurisdiction of all civil actions, brought by any Indian

tribe or band with a governing body duly recognized by the Secretary of the Interior, wherein the matter in controversy arises under the Constitution, laws, or treaties of the United States.

The effect of the bill would be to remove insofar as actions brought by Indian tribes are concerned, the $10,000 limitation provided in section 1331(a) of title 28 and thus permit them to maintain actions in the U.S. courts without any limitation on the amount in controversy, where the case arises under the Constitution, laws, or treaties of the United States. One of the purposes of the bill apparently is to overcome the effect of the decision in the case of *Yoder v. Assiniboine and Sioux Tribes*, 339 F. 2d 360 (1964) which held that the Federal courts did not have jurisdiction of an action brought by the Indian tribes involving oil and gas well spacing on tribal lands because the tribes failed to show that the jurisdictional amount of $10,000 was involved.

As indicated above, the *Yoder* case involved the power of a State to control oil- and gas-well spacing on Indian lands. Other suits which might be brought in the Federal courts under the bill would include actions to quiet title to land claimed by Indian tribes, including actions to set aside patents where it is alleged the patents infringe upon rights claimed by the tribes under the Constitution, laws, or treaties of the United States and actions for the protection of powers of tribal self-government. While an accurate estimate cannot be made of the number of cases which might result from the enactment of the bill, there is no reason to believe the number would be large.

Whether the bill should be enacted involves questions of policy on which the Department of Justice prefers to make no recommendation. However, if the bill is to receive favorable consideration it is suggested that since there presently

is a section 1361 to title 28, United States Code (Public Law 87-748; 76 Stat. 744) the bill should be amended by substituting "1361" for "1360" on line 4 and by substituting "1362" for "1361" on line 5 and again on line 6 of the bill.

The Bureau of the Budget has advised that there is no objection to the submission of this report from the standpoint of the administration's program.

Sincerely,

RAMSEY CLARK,
Deputy Attorney General.

Calendar No. 1473

59TH CONGRESS, 2d Session | SENATE | REPORT No. 1507

PERMITTING INDIAN TRIBES TO MAINTAIN CIVIL ACTIONS IN FEDERAL DISTRICT COURTS WITHOUT REGARD TO $10,000 LIMITATION

AUGUST 24, 1966.—Ordered to be printed

Mr. BURDICK, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany S. 1356]

The Committee on the Judiciary, to which was referred the bill (S. 1356) to amend title 28, United States Code, having considered the same, reports favorably thereon with amendments and recommends that the bill as amended do pass.

AMENDMENTS

1. Page 1, line 4, strike "1360" and insert in lieu thereof "1361".

2. Page 1, line 5, strike "1361" and insert in lieu thereof "1362".

3. Page 1, line 6, strike "1361" and insert in lieu thereof "1362".

4. Page 1, after line 11, insert a new section 2:

SEC. 2. The Chapter Analysis of Chapter 85 of title 28 of the United States Code is amended by adding at the end thereof the following new item:

"§1362. Indian tribes."

PURPOSE OF AMENDMENTS

The previous section number assigned, 1361, is already in use, and the proposed section must be renumbered as 1362.

PURPOSE OF BILL

The purpose of the bill as amended is to permit Indian tribes to bring civil actions arising under the Constitution, treaties, and laws of the United States, without regard to the $10,000 limitation, and accordingly amends chapter 85, title 28, United States Code, by adding a new section.

STATEMENT

The Department of the Interior and the Judicial Conference of the United States have recommended that this bill pass. The Department of Justice declines to take a position on the bill, observing that it is a matter of policy upon which it is not appropriate for the Department to take a position. The Department of Justice points out, however, that there is no reason to believe that the number of cases which might result from the expansion of jurisdiction would be very large.

At hearings on this bill held by the Subcommittee on Improvements in Judicial Machinery, Senator Quentin N. Burdick, author of the bill, testified in its behalf. The Senator's statement was substantially confirmed by Mr. Richmond Allen, Associate Solicitor in charge of indian [sic] affairs for the Department of the Interior, and by Marvin Sonosky, Esq., an attorney speaking on behalf of some half-dozen Indian tribes. In substance, the proponents of this bill indicate that the jurisdictional limitation works an especial hardship on Indian tribes. In many instances claims arise under special treaties between the United States and the tribes, but because of the limitation the matter cannot be litigated in Federal courts. As an example, several parcels of land may be claimed by the tribes, each of the parcels being valued at under $10,000, even though the aggregate constitutes more than $10,000. However, these

claims may not be added together for the purpose of meeting the jurisdictional amount, and the tribes are denied a Federal forum.

There is great hesitancy on the part of tribes to use State courts. This reluctance is founded partially on the traditional fear that tribes have had of the States in which their reservations are situated. Additionally, the Federal courts have more expertise in deciding questions involving treaties with the Federal Government, as well as interpreting the relevant body of Federal law that has developed over the years.

Currently, the right of the Attorney General of the United States to bring civil actions on behalf of tribes without regard to jurisdictional amount, a power conferred on him by special statutes, is insufficient in those cases wherein the interest of the Federal Government as guardian of the Indian tribes and as Federal sovereign conflict, in which case the Attorney General will decline to bring the action.

The proposed legislation will remedy these defects by making it possible for the Indian tribes to seek redress using their own resources and attorneys.

After a study of all of the foregoing the committee is of the opinion that this legislation is meritorious, and recommends that the bill S. 1356, as amended, be considered favorably.

Attached hereto and made a part hereof are the reports of the Department of the Interior, the Department of Justice, and the Judicial Conference of the United States.

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., December 22, 1965.

Hon. JAMES O. EASTLAND,
Chairman, Committee on the Judiciary,
U.S. Senate, Washington, D.C.

DEAR SENATOR EASTLAND: This responds to your request for a report on S. 1356, a bill to amend the Judicial Code to permit Indian tribes to maintain civil actions in Federal district courts without regard to the $10,000 limitation, and for other purposes.

We recommend that the bill be enacted.

The bill removes the $10,000 jurisdictional limitation upon civil litigation in the U.S. district courts by Indian tribes when the matter in controversy arises under the Constitution, laws, or treaties of the United States.

The Judicial Conference has endorsed the bill on the grounds that (1) it presents no difficulty of judicial administration, and (2) it is in line with recently enacted statutes conferring Federal question jurisdiction without regard to the amount of money involved. We concur in that view.

In addition, it is particularly appropriate to remove the $10,000 limitation with respect to litigation involving tribal lands that are or were held by the United States in trust for the tribe, or by the tribe subject to a restriction against, alienation imposed by the United States. The issues involved are Federal issues and the tribes should not be required to conduct the litigation in the State courts.

It should be noted that the United States as trustee can initiate the litigation in the Federal courts, and often does so. Occasionally, however, the U.S. attorney declines to bring an action, and the tribes should then have access to the Federal courts through their own attorneys.

The new section added to title 28 of the United States Code should be section 1362 rather than section 1361.

We also suggest that the bill should add the new section 1362 to the table of contents for chapter 85 that preceds section 1331.

The Bureau of the Budget has advised that there is no objection to the presentation of this report from the standpoint of the administration's program.

Sincerely yours,

HARRY R. ANDERSON,
Assistant Secretary of the Interior.

ADMINISTRATIVE OFFICE OF THE U.S. COURTS,
SUPREME COURT BUILDING,
Washington, D.C., October 1, 1965.

Hon. JAMES O. EASTLAND,
Chairman, Committee on the Judiciary,
U.S. Senate, Washington, D.C.

DEAR SENATOR EASTLAND: This is in further reply to your request of March 11, 1965, for the views of the Judicial Conference of the United States on S. 1356, a bill to amend the judicial Code to permit Indian tribes to maintain civil actions in Federal district courts without regard to the $10,000 limitation, and for other purposes.

At its recent session on September 22-23, 1965, the Judicial Conference voted to approve this legislation. The Conference believes that the elimination of the $10,000 jurisdictional limitation upon civil litigation of Indian tribes would present no difficulty of judicial administration and would be in line with the more recently enacted statutes conferring Federal question jurisdiction which do not contain a monetary limitation.

It should be noted that the proposed section 1361 of title 28 of S. 1356 should be numbered 1362 as the previous number is already in use.

Sincerely,

WILLIAM E. FOLEY,
Deputy Director.

U.S. DEPARTMENT OF JUSTICE,
OFFICE OF THE DEPUTY ATTORNEY GENERAL,
Washington, D.C., March 4, 1966.

Hon. JAMES O. EASTLAND,
Chairman, Committee on the Judiciary,
U.S. Senate, Washington, D.C.

DEAR SENATOR: This is in response to your request for the views of the Department of Justice on S. 1356, a bill to amend the Judicial Code to permit Indian tribes to maintain civil actions in Federal district courts without regard to the $10,000 limitation, and for other purposes.

Under existing law the district courts have original jurisdiction of all civil actions wherein the matter in controversy exceeds the sum or value of $10,000, exclusive of interest and costs, and arises under the Constitution, laws, or treaties of the United States (28 U.S.C. 1331(a)). The $10,000 jurisdictional amount is, of course, not applicable to actions brought in the name of the United States to enforce rights of Indian tribes arising under the Constitution, laws, or treaties of the United States (28 U.S.C. 1345). The bill would amend the Judicial Code by adding a new section under which the district courts would be vested with original jurisdiction of all civil actions, brought by any Indian tribe or band with a governing body duly recognized by the Secretary of the Interior, wherein the matter in controversy arises under the Constitution, laws, or treaties of the United States.

The effect of the bill would be to remove insofar as actions brought by Indian tribes are concerned, the $10,000 limitation provided in section 1331(a) of title 28 and thus permit them to maintain actions in the U.S. courts without any limitation on the amount in controversy, where the case arises under the Constitution, laws, or treaties of the United States. One of the purposes of the bill apparently is to overcome the effect of the decision in the case of *Yoder v. Assiniboine and Sioux Tribes*, 339 F. 2d 360 (1964) which held that the Federal courts did not have jurisdiction of an action brought by the Indian tribes involving oil and gas well spacing on tribal lands because the tribes failed to show that the jurisdictional amount of $10,000 was involved.

As indicated above the *Yoder* case involved the power of a State to control oil and gas well spacing on Indian lands. Other suits which might be brought in the Federal courts under the bill would include actions to quiet title to land claimed by Indian tribes, including actions to set aside patents where it is alleged the patents infringe upon rights claimed by the tribes under the Constitution, laws, or treaties of the United States and actions for the protection of powers of tribal self-government. While an accurate estimate cannot be made of the number of cases which might result from the enactment of the bill, there is no reason to believe the number would be large.

Whether the bill should be enacted involves questions of policy on which the Department of Justice prefers to make no recommendation. However, if the bill is to receive favorable consideration it is suggested that since there presently is a section 1361 of title 28, United States Code (Public Law 87-748; 76 Stat. 744) the bill should be amended by substituting "1361" for "1360" on line 4 and by substituting "1362" for "1361" on line 5 and again on line 6 of the bill.

The Bureau of the Budget has advised that there is no objection to the submission of this report from the standpoint of the administration's program.

Sincerely,

RAMSEY CLARK,
Deputy Attorney General.

CHANGES IN EXISTING LAW

In compliance with subsection (4) of rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

CHAPTER 85, TITLE 28, UNITED STATES CODE

§1361. * * *

§1362. Indian tribes.

"The district courts shall have original jurisdiction of all civil actions, brought by any Indian tribe or band with a governing body duly recognized by the Secretary of the Interior, wherein the matter in controversy arises under the Constitution, laws, or treaties of the United States.